

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CORN BELT POWER COOPERATIVE	DOCKET NO. DRU-01-3
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DECLARATORY ORDER

(Issued October 19, 2001)

On September 4, 2001, Corn Belt Power Cooperative (Corn Belt) filed with the Utilities Board (Board) a petition for declaratory order on the meaning and application of certain provisions of Iowa Code §§ 478.1 and 478.2 (2001) and 199 IAC 11.3(6). Corn Belt posed four questions dealing with electric transmission line informational meetings and one question dealing with termini or end points of a transmission line. Corn Belt said the ruling was requested to avoid unnecessary costs and delays associated with informational meetings where there is no statutory requirement that they be held and to clarify requirements for a franchise petition. No responses or objections to the request for declaratory ruling were filed.

Pursuant to 199 IAC 4.7, Corn Belt requested that an informal meeting be scheduled. On October 2, 2001, an informal meeting was held with representatives from Corn Belt, the Consumer Advocate Division of the Department of Justice, and the Board's staff in attendance. On October 4, 2001, the Board issued an order pursuant to Iowa Code § 17A.9(5)"d" stating that the Board intends to issue an order within 60 days of the date of the filing of the petition or such later time as agreed by the parties.

SUMMARY OF RELEVANT FACTS

For purposes of this ruling, the facts that are assumed are set forth on pages 3 and 4 of Corn Belt's petition:

In the first scenario posed by Corn Belt, one terminus of a proposed transmission line is within city limits and the other terminus is outside the city and within the boundaries of a proposed end-use customer that has requested electric service. The portion of the transmission line outside the city exceeds one mile, but the total distance outside the city, if the portion located on the end-use customer's property is excluded, is less than one mile. The second scenario is identical to the first, except all of the transmission line is located outside city limits. The line is more than one mile long but if the portion located on the end-use customer's property is excluded, the distance is less than one mile.

The third scenario posits that the entire line is outside city limits and the total length of the line is more than one mile. However, one terminus is located on property owned by Corn Belt and, if the property owned by Corn Belt is excluded, the distance is less than one mile. The fourth scenario finds one terminus located on Corn Belt's property and the other terminus on the end-use customer's property. Again, total distance is more than one mile but, if Corn Belt's and the end-use customer's property are excluded, the distance is less than one mile.

QUESTIONS POSED

Under the four scenarios outlined above, Corn Belt poses the same question: Assuming all other statutes, rules, regulations, and specifications established by the

Board are satisfied, is the utility required to conduct an informational meeting before filing an application for franchise to construct an electric transmission line capable of operating at 34,500 volts or greater. Corn Belt asks that the Board answer these questions "no."

The final question posed deals with the termini identified in the petition for franchise of an electric transmission line. Corn Belt asks if the termini must be in existence and electrically functional at the time the petition for franchise is filed or before the franchise may be granted. Corn Belt asks that the Board answer this question "no."

RELEVANT STATUTES

Iowa Code chapter 478 deals with the franchise of electric transmission lines.

Iowa Code § 478.1 provides, in part:

A person shall not construct . . . a transmission line . . . along, over, or across any public highway or grounds outside of cities . . . without first procuring from the utilities board . . . a franchise However, a franchise shall not be required for electric lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power or entirely within the boundaries of property owned by the end user of the electric power.

Iowa Code § 478.2 provides, in part:

As conditions precedent to the filing of a petition with the utilities board requesting a franchise for a new transmission line . . . the person . . . shall hold informational meetings in each county in which real property or rights therein will be affected

For the purposes of this section . . . "transmission line" means any line . . . extending a distance of not less than one mile across privately owned real estate.

Subrule 199 IAC 11.3(6) provides, in part:

Termini. This means the electrically functional end points of an electric line, without which it could not serve a public use. Examples include generating stations, substations, or other electric lines. In any franchise petition the termini must be identified

DISCUSSION AND RULING

Under all four scenarios posed by Corn Belt, the length of transmission line that is located on private property, exclusive of any property owned by the utility, the end-use consumer, or located within city boundaries, is less than one mile. In such situations, the Board does not believe an informational meeting is required. As discussed below, this result is consistent with Iowa Code chapter 478 and the Board's past practice.

Iowa Code § 478.1 deals with when a franchise is required, not when an informational meeting is necessary. This section provides that a franchise is not required for transmission lines located within the boundaries of a city. It further provides that a franchise is not required for electric lines constructed "entirely" within the boundaries of land owned by the utility (if engaged primarily in the transmission or distribution of electric power) or the property of the end use consumer who will benefit from the transmission line. In all four scenarios, a franchise is required pursuant to this section because the transmission lines are all at least partially outside of cities and not located "entirely" within the boundaries of land owned by the

utility or end-use consumer, but on other private property as well. The fact that a franchise is required, however, is not determinative of whether an informational meeting is required.

Iowa Code § 478.2 defines the requirements for informational meetings. Among other things, "transmission line" is defined for purposes of the informational meetings section only as any line extending a distance of not less than one mile across privately owned real estate. In determining what is privately owned real estate for purposes of this definition, it is appropriate to exclude property owned by the utility or end use consumer because the primary purpose of the informational meeting is to inform affected landowners of their legal rights, especially with respect to eminent domain. Such information has no relevance with respect to property owned by the utility or the end-use consumer, and no informational meeting is required when there is less than one mile crossing private property, excluding land owned by the utility or end-use consumer. However, the franchise petition itself must include those portions on utility or end-user property because these line segments remain under Board franchise authority and their location may impact line routing in adjacent areas.

This construction is consistent with the Board's past practice in franchise petitions. While this construction has never been formalized by rule or declaratory order, the Board's staff has advised potential franchise petitioners that it was their belief an informational meeting was not required in situations such as those posed by

Corn Belt. This declaratory ruling will formalize the construction and provide future guidance to those preparing franchise petitions.

The final question asked by Corn Belt is whether the termini identified in the petition for franchise must be in existence and electrically functional at the time the petition for franchise is filed or before the franchise may be granted. The answer is no. There is nothing in Chapter 478 or 199 IAC chapter 11 that would require the termini to be in existence and electrically functional at the time the petition for franchise is filed or before the franchise may be granted. One termini may be, for example, a new substation that will not be built until after the transmission line is completed. However, the Board cautions utilities that if one or both termini are speculative or are not to be built for some period after completion of the transmission line, this may impact the Board's decision on the franchise petition itself with respect to the issues of public use or overall plan of transmission served by the line. Iowa Code § 478.4. It is anticipated that any necessary explanations on proposed termini would be provided on franchise petition Exhibit D. 199 IAC 11.2(5)"a."

The Board will use this declaratory ruling as an opportunity to correct a possible misunderstanding that has occurred because of language used in an administrative judge's proposed decision cited at page 6 of Corn Belt's petition for declaratory order. In the proposed decision, the administrative law judge resolved the issue of whether an informational meeting was required where there were two separate transmission lines, each less than one mile in length but together more than one mile, by saying:

The two proposed transmission lines are clearly part of one project. Section 478.2, however, is addressed not to "projects" but to "transmission lines." For purposes of the Board's rules, transmission lines are defined by their termini, which means "the electrically functional end points of an electric line, without which it would not serve a public use. Examples include generating stations, substations, or other electric lines." Iowa Admin. Code 199-11.3(6)(1997).

In Re: The Petition of Mt. Pleasant Municipal Utilities, "Proposed Decision and Order," Docket Nos. E-21312 and E-21313 (1/30/97), pp. 25-26.

The proposed decision, which was adopted by the Board, is correct in the context of the case because the terms "termini" and "end points" are often used interchangeably. However, it should be noted that "end point" and "termini" might not be the same for some transmission lines. Subrule 199 IAC 11.2(2) requires that the franchise petition list the beginning and end points of a transmission line. In other words, the petition must show where the line in question starts and where it ends.

The termini, which are defined as the "functional" beginning and end of a line, necessary to serve a public use, are not always identical to the geographic beginning and end of the transmission line in question. For example, the termini for a given line could be a substation located several miles away from the geographic end of the transmission line in question. 199 IAC 11.3(6). Another example is transmission lines that cross several counties. Because lines are franchised by county, the termini for a line in one county that continues across the state could be a generating station located hundreds of miles away. The beginning and end points of the line for that county, however, would be the county borders.

This clarification is important as it relates to Corn Belt's question regarding whether the termini must be functional when the petition is filed or a decision reached on the franchise. The answer, as discussed above, is no, but both the geographic beginning and end of the line and the termini must be identified in the franchise petition.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The request for declaratory order filed by Corn Belt Power Cooperative on September 4, 2001, is granted to the extent discussed in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Mark O. Lambert

Dated at Des Moines, Iowa, this 19th day of October, 2001.